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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,499	08/05/2003	Martin Grohman	33105	8662

7590
HOVEY WILLIAMS LLP
Suite 400
2405 Grand Boulevard
Kansas City, MO 64108

09/21/2007

EXAMINER

CANFIELD, ROBERT

ART UNIT	PAPER NUMBER
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3635

MAIL DATE	DELIVERY MODE
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09/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/634,499

Applicant(s)

GROHMAN, MARTIN

Examiner

Robert J. Canfield

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-36, 46-52, 55, 56, 60 and 62 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-36, 46-52, 55, 56, 60 and 62 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 07/16/07 has been entered. Claims 28-36, 46-52, 55, 56, 60 and 62 are pending. Claims 1-27, 37-45, 53, 54, 57-59 and 61 have been canceled.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 28-36 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,470,641 to Faure.

In figures 1 and 2 Faure provides first 12 and second 14 boards each having upper and lower lips separated by grooves 36/38 on opposite sides. The boards 12/14 are fastened to spaced joists 46 by generally T-shaped metal fasteners 16. The fasteners 16 have a base 22 and a pair of protrusions 24/26 above the base at a height. The thickness of the lower lips or vertical distance to the grooves from the bottom of the boards is greater than the distance between the base 22 and protrusions 24/26 of the fasteners 16 to provide pressure of the protrusions [bottom of column 2] to provide a holding force. The metal of the fasteners is

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inherently a resilient material. The base 22 presents a waist portion defining generally uniform gaps between adjacent boards (see figure 2).

4. Claims 28-30, 36, and 62 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent 6,314,699 to West.

West provides first and second boards 16 each having upper and lower lips separated by grooves 18 on opposite sides. The boards 16 are fastened to spaced joists 14 by fasteners 12. The fasteners 12 have a base and a pair of protrusions 28/48 above the base at a height. The thickness of the lower lips 22 or vertical distance to the grooves from the bottom of the boards is greater than the distance between the base and tips 48 of protrusions 28 of the fasteners 16. While the tips 48 are not disclosed as bearing on the lower lips to provide an interference type fit they are operable to rigidly couple to the joists and are capable of doing so in an interference type manner if the gap between the boards was slightly increased. As such they are "operable to" exert a downward holding force as recited in claim 37 but do not "exert" a downward holding force as required in claim 31. Figure 1A appears to show at least about a 5% difference.

5. Claims 28-36, 46-52, 55, 56, 60 and 62 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication 2002/0121064 to Erwin.

Erwin provides T shaped connectors 24 in the grooves 22 of adjacent boards.

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The figures of Erwin clearly show that the thickness of the lower lip is greater than the distance from the base of the clip to the lower edges of the protrusions of the clip.

The particular percentage in the difference of the dimension is viewed as a choice of design that would have been obvious at the time of the invention to one having ordinary skill in the art. One of ordinary skill in the art would have readily recognized that percent difference could have been varied and there is no unexpected or unpredictable results obtained by claimed percent differences.

6. Applicant's arguments filed 07/16/07 with respect to claim 28 and Faure have been fully considered but they are not persuasive.

Applicant argues the fastener base of Faure prevents the formation of uniform gaps. Applicant illustrates an alternative embodiment of Faure that is not relied upon in the rejection. The base portion 22 of the fastener 16 provides a waist portion and will define generally uniform gaps.

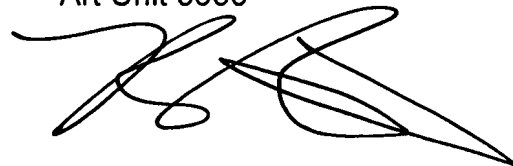
The argument with respect to claim 46 and Faure has been found persuasive. Applicant argues that the examiner has equated nubs 48 as the claimed protrusions. This is not the case. The nubs 48 comprise a portion of the protrusions 28 and 30. The nubs 48 are the lower most portions of the protrusions and distance F is measure to the lower most portions.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert J. Canfield whose telephone number is 571-272-6840. The examiner can normally be reached on M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rich Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Robert J Canfield
Primary Examiner
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09/19/07